

I certify that the attached is a true and
correct copy of HB 261, which
was filed of record on DEC 20 1990
and referred to the committee on.

Criminal Jurisprudence

Betty Murray

Chief Clerk of the House

1991 JAN 30 11 14 30

HOUSE OF REPRESENTATIVES

FILED DEC 20 1990

By

Debra Lantieri

H. B. No 261

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on the requirement of a polygraph
examination of a complainant as a condition to charging defendants
accused of certain criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 15, Code of Criminal Procedure, is
amended by adding Article 15.051 to read as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT
PROHIBITED. A peace officer or attorney representing the state may
not request or require a polygraph examination of a person who
charges or seeks to charge in a complaint the commission of an
offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the
crowded condition of the calendars in both houses create an
emergency and an imperative public necessity that the
constitutional rule requiring bills to be read on three several
days in each house be suspended, and this rule is hereby suspended.

Vande Putte
Cortez

By Danbury

H. B. No. 261

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91 MAR 18 AM 11:50
HOUSE OF REPRESENTATIVES

HOUSE COMMITTEE REPORT

1st Printing

By Danburg, et al.

H.B. No. 261

Substitute the following for H.B. No. 261:

By De La Garza

C.S.H.B. No. 261

A BILL TO BE ENTITLED

AN ACT

relating to certain polygraph examinations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.051 to read as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED. A peace officer or attorney representing the state may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

(b) If a peace officer or attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a) of this article, the peace officer or attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) A peace officer or attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) of this article unless the officer or attorney provides the

1 information in Subsection (b) of this article to the person and the
2 person signs a statement indicating the person understands the
3 information.

4 (d) A complaint may not be dismissed solely:

5 (1) because a complainant did not take a polygraph
6 examination; or

7 (2) on the basis of the results of a polygraph
8 examination taken by the complainant.

9 SECTION 2. This Act takes effect September 1, 1991.

10 SECTION 3. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

3-12-91
(date)

Sir:
We, your COMMITTEE ON CRIMINAL JURISPRUDENCE,
to whom was referred HB 261 have had the same under consideration and beg to report
(measure)

back with the recommendation that it
() do pass, without amendment.
() do pass, with amendment(s).
☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
A fiscal note was requested. ☒ yes () no An author's fiscal statement was requested. () yes ☒ no
A criminal justice policy impact statement was requested. ☒ yes () no
An equalized educational funding impact statement was requested. () yes ☒ no
An actuarial analysis was requested. () yes ☒ no
A water development policy impact statement was requested. () yes ☒ no
A federal funds impact statement was requested. () yes ☒ no
() The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.
This measure ☒ proposes new law. ☒ amends existing law.
House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Russell, Ch.	<input checked="" type="checkbox"/>			
Ovard, V.C.			<input checked="" type="checkbox"/>	
Cook	<input checked="" type="checkbox"/>			
de la Garza	<input checked="" type="checkbox"/>			
Fleuriet	<input checked="" type="checkbox"/>			
Gallego	<input checked="" type="checkbox"/>			
Ogden	<input checked="" type="checkbox"/>			
Place				<input checked="" type="checkbox"/>
Tallas				<input checked="" type="checkbox"/>

Total
6 aye
0 nay
1 present, not voting
2 absent

Gib Lewis
CHAIRMAN
Deborah K. McCall
COMMITTEE COORDINATOR

COMMITTEE ON CRIMINAL JURISPRUDENCE

BILL ANALYSIS

By: Danburg

H.B. 261

By: de la Garza

C.S.H.B. 261

BACKGROUND

Currently, Chapter 15, Code of Criminal Procedure, does not regulate the use of polygraph examinations on victims charging defendants with certain sexual offenses. A few counties condition an investigation or inform the victim that an investigation is conditioned on the results of the polygraph examination and fewer still actually threaten to jail sexual assault complainants if they are caught lying by the exam.

The polygraph does not signal whether a person is being truthful or deceptive. The instrument cannot detect deception by itself. The results of the test depend heavily on the interaction between the examiner and the examined. The examiner must infer deception or truthfulness by the examined's physiological responses to various questions. Correct guilty detections range from seventeen (17) to one hundred (100) percent. For greater accuracy, the voluntary cooperation of the individual is recommended.

PURPOSE

This bill prohibits peace officers and state attorneys from requiring submission to a polygraph examination in certain sexual assault offenses.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Chapter 15, Code of Criminal Procedure, by adding Article 15.051, as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED. (a) Prohibits a peace officer or attorney representing the state from requiring a polygraph examination of a person who charges or seeks to charge in a complaint certain offenses, including indecency with a child, sexual assault, aggravated sexual assault, and incest.

(b) Requires a peace officer or attorney representing the state who requests a polygraph exam of a person making or seeking to make such a charge to inform the complainant that the exam is not required and that a complaint may not be dismissed solely for refusal to take a polygraph exam or on the basis of polygraph exam results.

(c) Prohibits a peace officer or attorney representing the state from taking a complainant's polygraph examination unless the officer or attorney provides the information in Subsection (c) of this article to the person and the person signs a statement indicating the person understands the information.

C.S.H.B. 261

(d) Provides that a complaint may not be dismissed solely for refusal to take a polygraph exam or on the basis of polygraph exam results.

SECTION 2 Effective date: September 1, 1991.

SECTION 3 Emergency clause.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill prohibited a peace officer or state attorney from requesting and/or requiring a polygraph examination of a complainant in a sexual assault offense. The substitute just prohibits a peace officer or state attorney from requiring the polygraph examination. They may request it as long as they notify the victim that the test is not mandatory.

RULEMAKING AUTHORITY

It is the opinion of this committee that this bill does not delegate rulemaking authority to a state officer, agency, department, or institution.

SUMMARY OF COMMITTEE ACTION

House Bill 261 was considered in a public hearing on February 19, 1991. Testimony was taken at the hearing. H.B. 261 was referred to the Procedural Subcommittee which held a formal meeting on March 4, 1991. At that meeting Representative de la Garza offered a complete committee substitute which was adopted and sent to the full committee for consideration. The 48 hour subcommittee rule was suspended on March 5, 1991 so that H.B. 261 could be considered in full committee. The full committee met in a public hearing on March 5, 1991. H.B. 261 was left pending in committee. The full committee met in a public hearing on March 12. At that hearing Rep. Russell laid out a complete committee substitute to H.B. 261. Rep. Russell offered an amendment to C.S.H.B. 261 which was adopted by the the following vote: 6 ayes, 0 nays, 1 pnv, and 2 absent. The motion to report H.B. 261 as substituted to the full house with the recommendation that it do pass and be printed carried with a vote of 6 ayes, 0 nays, 1 pnv, and 2 absent.

The committee amendment deleted Section 2 of C.S.H.B. 261 which amended Chapter 2 of the Code of Criminal Procedure to prohibit a peace officer from being suspended, discharged or subjected to any other form of employment discrimination because the peace officer refused to take a polygraph examination.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

March 14, 1991

TO: Honorable Sam Russell, Chair
Committee on Criminal Jurisprudence
House of Representatives
Austin, Texas

IN RE: Committee Substitute for
House Bill No. 261

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 261 (relating to the prohibition on the requirement of a polygraph examination of a complainant as a condition to charging defendants accused of certain criminal offenses) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

In response to your request for a Criminal Justice Policy Impact Statement on this bill, this office has determined that no significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies should be anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source: LBB Staff: JO, JWH, DF, DC, DE

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 7, 1991

**TO: Honorable Sam Russell, Chair
Committee on Criminal Jurisprudence
House of Representatives
Austin, Texas**

**IN RE: House Bill No. 261
By: Danburg**

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 261 (relating to the prohibition on the requirement of a polygraph examination of a complainant as a condition to charging defendants accused of certain criminal offenses) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

In response to your request for a Criminal Justice Policy Impact Statement on this bill, this office has determined that no significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies should be anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source: LBB Staff: JO, JWH, DF, DC, PA

H. B. No. 261

By Danbury

A BILL TO BE ENTITLED
AN ACT

relating to a prohibition on the requirement of a polygraph examination
of a complainant as a condition to charging defendants accused of certain
criminal offenses.

DEC 2 1990

JAN 20 1991

MAR 12 1991

MAR 18 1991

MAR 27 1991

1. Filed with the Chief Clerk.

2. Read first time and Referred to Committee on

Criminal Jurisprudence

3. Reported favorably (amended)
(as substituted) and sent to Printer at 4:25 pm

MAR 15 1991

4. Printed and distributed at 11:50 am

5. Sent to Committee on Calendars at 5:58 pm

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____
present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas,
_____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting).

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments)
(Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

HOUSE OF REPRESENTATIVES

91 MAR 18 AM 11:50

198